IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUIT NO. 979 OF 1989

M/s. Priyakant Brothers ... Plaintiffs

V/s

M/s. P. Govindji & anr. ... Defendants

Mr. P.V. Shah for the plaintiffs.

None present for the defendants.

CORAM: P.V. KAKADE, J.

DATED: 16TH AUGUST, 2004.

P.C.:

1. The plaintiffs have filed the suit for recovery of an amount of Rs.52,565.33 with costs and interest on principal amount of Rs.49,295.33 at the rate of 21% p.a. from the date of filing of the suit till payment.

2. It is the case of the plaintiffs that they were Commission Agents of the defendants and defendants used to supply them betel-nuts from the place of business. Some of the consignments of betel-nuts received by the plaintiffs from defendant No.1 were of defective or inferior quality and therefore the plaintiffs could not sell or dispose of such goods in the local market at

Mumbai. Accordingly, the defendant No.1 was informed about the position, who visited Mumbai personally and agreed to take back those defective goods immediately. They also instructed the plaintiffs to sell the defective goods to the party of Indore known to them at the responsibility of defendant No.1 as the said party in question was not known to the plaintiffs at all. Defendant No.1 also requested the plaintiffs to prepare four different invoices in the name of party at Indore aggregating to value of Rs.1,80,039.22 since according to the defendant No.1 the said party from Indore was not in a position to pay the entire invoice amount at a time and preferred to pay by instalments. The plaintiffs acted on the instructions from defendant No.1 and prepared four invoices and handed over all the four original invoices to the defendant No.1. Defendant No.1 also arranged with defendant No.2 to lift the said goods from the godown of plaintiffs and those goods were taken away. Plaintiffs credited ledger account with the defendant No.1 with value of the defective goods sold as aforesaid after deducting usual expenses. The amount under the invoices could not be received from the said party inspite of repeated demand. The defendant No.1 disputed the claim and hence the suit came to be filed.

3. The defendant No.1 has filed written statement raising various contentions and also challenging the jurisdiction of this Court to try the present suit with submission that the suit deserves to be dismissed with costs.

4. On the basis of the pleadings, issues are settled. The settled issues and my findings thereon are as under:

(1) Do the plaintiffs prove that this Hon'ble Court has got jurisdiction to entertain and try this suit ?

(2) Do the plaintiffs prove that the plaintiffs are registered with the Registrar of Firms, Bombay ?

(3) Do the plaintiffs prove the case as made out in the plaint ?

(4) What order and decree ?

My findings on the above issues are -

Issue No.1 :- Affirmative.

Issue No.2 :- Affirmative.

Issue No.3 :- Affirmative.

Issue No.4 :- As per final order.

5. At the outset, it may be noted that though defendant No.1 filed his written statement, he did not appear in the Court for hearing of the suit and, therefore, the suit proceeded ex-parte against them. The advocate for the defendant No.2 also did not appear on the last date inspite of the fact that one more chance was given to appear and prosecute the case, however, he failed to do so. On the other hand, plaintiffs' witness entered the witness box and proved his case on affidavit of evidence as well as affidavit of documents in original. Therefore, the plaintiffs entire evidence has gone unchallenged on record and, therefore, I hold that the plaintiffs' claim is proved as per the suit claim. Hence the order :-

O R D E R

The suit stands decreed with costs.

Defendant No.1 shall pay the amount of Rs.52,565.33 to the plaintiffs alongwith interest on principal amount of

Rs.40,295.33 at the rate of 12% p.a. from the date of filing of the suit till payment or realization.

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